LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 3 1971
ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

No. 70-5021

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, and on behalf of all others similarly situated,

Appellants,

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

REPLY BRIEF FOR APPELLANTS TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

MICHAEL F. LEFKOW
Community Legal Counsel
116 South Michigan Avenue
Chicago, Illinois 60603

Washington, D. C. · THIEL PRESS · 202 · 393-0625

IN THE

Supreme Court of the United States

No. 70-5021

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, and on behalf of all others similarly situated,

Appellants,

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

REPLY BRIEF FOR APPELLANTS TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

I. THE SOCIAL SECURITY ACT ENTITLES ILLINOIS CHILDREN BETWEEN THE AGES OF 18 AND 21 IN ATTENDANCE AT A COLLEGE OR UNIVERSITY TO A GRANT OF AID TO FAMILIES WITH DEPENDENT CHILDREN.

A. Introduction

The government contends in its brief amicus curiae that Illinois need not furnish an Aid to Families with Dependent Children (AFDC) grant to the appellant class of Illinois wel-

fare children because the view of the Department of Health, Education and Welfare is that

> State plans are not invalid merely because they do not define eligibility in terms as broad as the Act, but only if the limitation in question is inconsistent with the purposes of the act.

(p. 11). Appellants reject this view and state that even if it were valid, the government has not presented a case under its own standard which justifies the absolute disqualification of needy and dependent 18-21 year old children who are attending a college or university.

There is no doubt that the government (p. 9) found the denial of AFDC benefits to children attending a college or university *inconsistent with the purposes of the Act*:

> The Department does not approve the policies reflected in either of the state provisions in question . . . . The Department believes the omission of college children from AFDC may have the unfortunate effect of perpetuating poverty and of discouraging some of the most able children of deprived families from realizing their full potential and from assuming leadership needed in their communities.

It is settled that the paramount goal of the AFDC program is the protection of dependent children. *King v. Smith*, 392 U.S. 309, 325 (1968). The Department concedes that appellants are dependent children whom Congress meant to protect. The Department admits that this class of children may well be condemned to a cycle of poverty in spite of the public purpose of the Act to keep them out of poverty and to maintain and strengthen family life.

The only justification that the government offers for accepting the Illinois eligibility limitation is that Illinois may have decided that children attending a college or university "are not 'needy' enough to justify their inclusion in that state's AFDC program" (p. 29). This proposal is inadequate because the state's power to determine the standard of need is not congruent with a power to determine under the Act

the classes of people who may come to the state and say, "I am needy."

Further inadequacy is revealed by the Congressional mandate of §402(a)(8) requiring student earned income to be disregarded (Appellant's brief in No. 70-5021, pp. 20, 51, 81-83). Also, HEW regulations, 45 C.F.R. §233.20(a)(3)(iv)(b) (1971), and the Illinois Department of Public Aid (IDPA) Categorical Assistance Manual (CAM) §1062.6 require that scholarships, grants and loans must be disregarded in determining need except for any part thereof that is available to meet current need. Thus, there is no fat in scholarships, grants and loans for a poor child. Any money not used for school expenses would be budgeted by appellees as an available resource and deducted from the child's AFDC grant. The implication by the federal and state governments that needy college children are less needy than needy vocational school children is simply false. AFDC sustenance benefits are necessary for both.

It is apparent that what the government seeks in this case is a reversal. But, it suggests to this Court an unauthorized method for obtaining that result. The government would have this Court endorse its view allowing state limitations on eligibility subject to the Department's determination of reasonableness (which it calls the doctrine of "equitable treatment"), coupled with a finding that the application of the doctrine was unreasonable in the instant case, and requires reversal. Appellants assert for the reasons stated in our opening brief (pp. 52-60) and for reasons that appear hereafter that this doctrine of equitable treatment is an unnecessary, undesirable, and unauthorized basis for the decision in this case.

B. The Standard for Determining Compliance With the Act Is the Act Itself

The government advances a standard it calls "equitable treatment" to be used to test state compliance with the Act rather than the terms of the Act itself. This theory was recently considered by the United States Court of Appeals

for the Ninth Circuit in Arizona State Department of Public Welfare v. Department of Health, Education and Welfare (No. 71-1177 and 71-1250, Sep. 14, 1971). The State of Arizona had pursued judicial review in the Court of Appeals following an administrative determination by HEW that Arizona was not complying with the Act and HEW regulations in several respects. HEW had held that Arizona's requirement that the relative caring for a dependent child have legal custody "violates the doctrine of equitable treatment and renders the State's AFDC plan out of conformity with [42 U.S.C. § 602(a)(10)]." Slip opinion at 25. The court viewed HEW's position as follows:

> It is clear from the Administrator's analysis and conclusion that he found Arizona's legal custody provision out of conformity with 42 U.S.C. § 602(a)(10) only because he found it in violation of the "doctrine of equitable treatment." It is equally clear from HEW's brief in this case that the gravamen of HEW's objection to the legal-custody provision is its alleged nonconformity with that doctrine. Thus the questions on appeal, as posed by the briefs and arguments in this case, are (1) whether the "doctrine of equitable treatment," through 42 U.S.C. § 602(a)(10), imposes a valid federal requirement on state AFDC plans, and (2) if so, whether Arizona's legal-custody provision contravenes that requirement.

Slip opinion at 25-26.

The court declined to consider HEW's theory, holding that the Act itself was the legal standard by which to measure state compliance:

> We decline to answer these questions as posed. Instead, *we hold that Arizona's legal-custody provision is in direct conflict with the requirements of 42 U.S.C. § 602(a)(10), even without the intermediation of the equitable-treatment doctrine.* Section 602(a)(10) requires ". . . that aid to families with dependent children shall be furnished . . . to all eligible individuals. . . ."

(Emphasis added.) Slip opinion at 26.

In applying the standard of the Act, the Ninth Circuit found Arizona to be out of compliance:

> Thus, a "needy child . . . who has been deprived of parental support or care: is just as much a "dependent child: within the meaning of the Act when he lives with a relative as when he lives with a parent. 42 U.S.C. § 606(a). A "famil[y] with dependent children" is just as much a "family" within the meaning of the Act when it consists of the child and a relative other than a parent as when it consists of the child and a parent. Id. §§ 601, 606(b).
>
> * * * * *
>
> The Act no more permits any otherwise eligible category of relatives to be automatically rendered totally ineligible for AFDC assistance, on the basis of conditions not found in the Act, than it permits any category of parents to be. And the Act does not permit the latter. See *King v. Smith, supra.*
>
> Although the precise question under discussion is, so far as our research has shown, one of first impression, dicta in other cases support our reading of the Act. Referring to 42 U.S.C. §§ 606(a) and (b), one court has noted that
>
> > "the definitions contain no limitation on eligibility by reason of the fact that one, who is otherwise a 'dependent child,' resides in a household with or without one or more other siblings or other persons. Nor do the definitions or any other portion of the Act vest in any state the authority to embroider upon the definition of 'dependent child,' so as to insert conditions and limitations beyond these imposed by Congress."
>
> *Williams v. Dandridge*, D. Md., 1969, 297 F. Supp. 450, 455 (footnote omitted), *rev'd on other grounds*, 1970, 397 U.S. 471. Accord, *Dew v. Henry*, D. Ariz., 1969, 297 F. Supp. 587, 591. And in *King v. Smith, supra*, 392 U.S. at 330, the Supreme Court found it unlikely
>
> > "that Congress, at the same time that it intended to provide programs for the economic security

> and protection of *all* children, also intended arbitrarily to leave one class of destitute children entirely without meaningful protection." (emphasis in original.)

Slip opinion at 27-29.

Appellants assert that the Ninth Circuit's standard of review was the correct one for determining compliance or non-compliance of a state's plan or laws with the Act and HEW regulations.

The court properly rejected judicial entanglement with such a broad, unauthorized doctrine of administrative powers sought by HEW. Endorsement of the "equitable treatment" doctrine would inevitably lead to Balkanization of the federal welfare programs which the government admits "makes little sense in a highly industrialized and mobile society (p. 9). Endorsement might also lead to a standard of review unacceptable under the Act and this Court's decision in *Rosado v. Wyman,* 397 U.S. 397, 422-23 (1970):

> We find not the slightest indication that Congress meant to deprive federal courts of their traditional jurisdiction to hear and decide federal questions in this field. It is, of course, no part of the business of this Court to evaluate, apart from federal constitutional or statutory challenge, the merits or wisdom of any welfare programs, whether state or federal, in the large or in the particular. It is, on the other hand, peculiarly part of the duty of this tribunal, no less in the welfare field than in other areas of the law, to resolve disputes as to whether federal funds allocated to the State are being expended in consonance with the conditions that Congress has attached to their use.

The standard of review applied to this case clearly requires a reversal of the court below. The analysis is that a "needy child . . . who has been deprived of parental support or care" is just as much a "dependent child" within the meaning of the Act when he is a "student" attending a college or university or when he pursues "a course of vocational or

technical training designed to fit him for gainful employment" at a college or university as when he is attending a vocational or technical school. See 42 U.S.C. § 602(a). Congress placed the emphasis on the requirement of being a "student" as a condition of eligibility for 18 to 21 year olds to receive AFDC. When an otherwise eligible student has an attendance relationship to any of the schools or courses of training specified in the Act he is a "dependent child" within the meaning of the Act and entitled to AFDC.

C. The Social Security Act Requires Illinois To Furnish Some Aid to All Children Declared Eligible By Section 406(a).

The government, disregarding the foremost guide to legislative intention, i.e., the language employed in the statute, contends that from the outset of the Act, the persons declared eligible by § 406(a) were not necessarily entitled to AFDC—that the definitions contained in §406(a) are not mandatory. The government also claims that definitional sections of Titles IV other than § 606(a) "reiterate the non-mandatory nature of the definitions contained therein". (p. 20). This argument is not persuasive. The government admits that §407 on its face grants the states the right or opportunity to include a needy child deprived of parental support because of unemployment of his father within the definition of dependent child contained in §406(a). The Act itself allows this "if" the state submits a plan which meets certain federal requirements. No such option is granted in §406(a). Indeed, the conclusion must be that if an option appears on the face of one statute in this title of the Act, its non-appearance in other statutes indicates that it is mandatory.

To support its view that granting aid to all the Congressional eligibles is not mandatory, the government draws on the remarks in 1935 of Senator Harrison (p. 19):

> A state will not have to aid every child which it finds to be in need. Obviously, for many States, that would be too large a burden. It may limit aid to children living with their widowed mother, or it can include children without parents living with near relatives. The provisions are not for general relief of poor children but are designed to hold broken families together.

79 Cong. Rec. 9269 (1935).

The government has misinterpreted and misunderstood the nature of these remarks. In stating that a "State will not have to aid every child which it finds to be in need," Senator Harrison was referring to the provisions of the bill which limited eligibility to children in families where there had been a death, desertion or continued absence from the home by the breadwinner. This represented a reduction in the type of families eligible from those eligible under the Federal Emergency Relief Act. As various work programs and unemployment compensation schemes were instituted to counteract the Depression, it was no longer deemed necessary to provide aid to families in which there was a breadwinner in the home who could provide an adequate income:

> With respect to the first child-welfare problem, that of the child in the broken home, where there is no adequate income, I desire to call you attention to facts developed by the relief survey. This survey indicates that there are some 350,000 families of this type, with 700,000 children, which have been supported by the relief. With relief no longer available the necessity will naturally arise of throwing these children in institutions, as the mother cannot usually care for them and at the same time go out and work.
>
> The problem of keeping such broken families together has caused 45 States to enact laws, generally termed "mothers' pensions," and with the termination of the Federal emergency relief measures it would seem almost imperative that the States be

> assisted in bearing the financial burden of providing these pensions.

79 Cong. Rec. 9269 (1935):

The statement that aid might be limited to children living with their widowed mother, or can include children without parents living with near relatives was meant to explain that the federal law was expanding eligibility beyond what the State "mothers' pensions" laws had allowed. Congress had determined that this was the least expensive, and more humane for the children than placing them in institutions.

Provisions for the general relief of poor children were matters for later Congresses, including the present one. See also Sen. Rep. No. 628, 74th Cong., 1st Sess. 17 (1935); *Dandridge v. Williams*, 397 U.S. 471, 480 (1970). ("[T]he federal law requires that the child, to be eligible for AFDC payments, must live with one of several enumerated relatives.")

If authority in addition to the plain meaning and purposes of the Act and committee reports is necessary, statements by the drafter of a bill may be resorted to as a guide to the statute's meaning. Cf., e.g., *Humphrey v. Smith*, 336 U.S. 695, 698-700 (1949). Testimony of Katherine Lenroot, Chief, Children's Bureau, Department of Labor, was a member of the President's Committee on Economic Security responsible for drafting the Committee's Report on Security for Children. Before the House Committee on Ways and Means at their hearings on H.R. 4120, she declared that the purpose of Title IV (the AFDC Title) was to

> . . . meet the basic needs of children everywhere throughout the country—need for economic security when the father is absent from the home. . . . The provisions of the Bill would only attempt to make *universally available throughout the United States certain minimum measures of public protection* without which any private effort and any purely local effort is bound to be spotty and be most inadequate in the places and areas where children are in the greatest need.

House Committee on Ways and Means, Economic Security Act, Hearings on H.R. 4120, 74th Cong., 1st Sess. 262-63 (1935). (Emphasis added.) When questioned by the Senate Finance Committee on what would be the reaction if

> Congress . . . would feel that it should be left to the States entirely without making it mandatory upon some administrator here, or board, with reference to the laws passed by the State, but would make the contribution to the States, make suggestions to the States, and not make it mandatory . . . ?

Lenroot testified that a cooperative approach ought to be taken, but that

> . . . there are certain minimum standards that ought to be insisted upon by the Federal Government if the money is made available to the States, for the reason that we have such a wide variation in the effectiveness of the State and local administrations of mothers' aid in this country, because the mothers' aid program has been, as I have pointed out, largely a local development with very little going in, in the way of services or of equalization funds, from the State agencies.

Id. at 338-39.

As discussed in our opening brief, pp. 63-68, certain minimal standards were required by the federal government, including the right of the individuals defined by the Act whose claims for AFDC were denied to have a fair hearing. These minimal standards were required to overcome the parochialism of the state and local programs and to effectuate the purposes of the Act.

CONCLUSION

For the reasons stated in this reply brief, appellants urge this Court to instruct the government (The Department of Health, Education and Welfare) through this decision, as Congress has previously done (Sen. Rep. No. 744, 90th

Cong., 1st Sess., 166-67), to assure that Illinois, when participating in the Aid to Families with Dependent Children program shall, as a condition of receiving federal funds, provide AFDC benefits to all persons made eligible by Congress, and to enforce the Social Security Act accordingly.

Respectfully submitted,

Michael F. Lefkow
Attorney for Appellants
in No. 70-5021

Community Legal Counsel
116 South Michigan
Chicago, Illinois